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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,816	04/24/2006	Florence Henry	C 2874 PCT/US	9093

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EXAMINER	
MI, QIUWEN	
ART UNIT	PAPER NUMBER
1655	

NOTIFICATION DATE	DELIVERY MODE
07/14/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)
	10/576,816	HENRY ET AL.
	Examiner	Art Unit
	QIUWEN MI	1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 June 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-17,19 and 21-33* is/are pending in the application.

4a) Of the above claim(s) *22-31* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-17,19,21,32 and 33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/3/2011*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

CONTINUED EXAMINATIONS

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/14/2011 has been entered.

Applicant's amendment in the reply filed on 6/14/2011 is acknowledged. Claims 1-11 18, and 20 have been cancelled. Claims 12-17, 19, and 21-33 are pending. Claims 22-31 are withdrawn. **Claims 12-17, 19, 21, 32 and 33 are examined on the merits.**

Any rejection that is not reiterated is hereby withdrawn.

Applicant is required to delete the recitation of "page 42-43; page 10/lines 25-29" in claim 32, lines 9-10.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12, 13, 19, 32 and 33 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Charrouf et al (Triterpenes and sterols isolated from the pulp of *Argania spinosa* (L.), Sapotaceae, Plantes Medicinales et Phytotherapie 25 (203), 112-117, 1991) (see full translation attached), in view of Laigneau et al (FR 2692783 A1).

Charrouf et al teach tripterpenic alcohols and sterols were isolated from the unsaponifiable fraction of the pulp's (thus claims 12 and 13 are met) lipidic extract (thus a vegetable oil) (thus a lipophilic extract) of *Argania spinosa*, and these compounds are lupeol (thus claim 19 is met), beta and alpha-amyrines, etc (see page 1, Abstract). Charrouf et al also that Argan tree (the same as *Argania spinosa*) produces a fruit called "Argan", which is formed of a fleshy part or pulp and a very hard core containing an oleaginous seed. Charrouf et al teach the pulp is ground, the lipids are extracted with hexane (thus claim 33 is met) in the soxhlet apparatus. The unsaponifiable fraction of the hexane extract is isolated according to the method described in [3] (page 2, 4th paragraph).

Charrouf et al do not teach a method of treating skin damaged by UVA comprising the lipophilic extract from the pulp of Argania spinosa fruit, and at least one dermopharmaceutical auxiliary and/or additive.

Laigneau et al teach a composition contains the unsaponifiable fraction of sesame oil (thus oily boides, thus at least one dermopharmaceutical auxiliary and/or additive, thus claim 32 (b) is met) mixed with one or more unsaponifiable fractions from any oil, especially a vegetable oil, containing vitamin E, especially soya oil and particularly wheat germ oil. Preferably the composition contains the unsaponifiable fraction for wheat germ oil and the unsaponifiable fraction of sesame oil, both as concentrates obtained by molecular distillation of the oils at 190-

260 (200-220) degree C and 0.1-1.5 Pa (0.13-0.5 Pa). The amount of unsaponifiable fraction in each concentrate is 15-25% (10-20%), and the amount of each concentrate in the composition is 10-90% (50%). A cosmetic contains the composition in a physiologically acceptable carrier, and may be a cream, emulsion, ointment, lipstick, a solar product or restructuring, nutritive, anti-wrinkle or day cream. A composition for oral use may be a capsule or tablet. Laigneau et al teach the composition is used for application to the skin, or as a nutritional supplement (claimed). Pharmaceuticals are used to prevent or treat the effects of UV-A on the skin (see Abstract, full translation is attached).

It would also have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to combine unsaponifiable fraction of sesame oil from Laigneau et al and the tripterpenic alcohols and sterols isolated from the unsaponifiable fraction of the pulp's lipidic extract from Charrouf et al to treat the effects of UV-A on the skin since Laigneau et al teach a composition for treating the effects of UV-A on the skin containing the unsaponifiable fraction of sesame oil (thus oily boides, thus at least one dermopharmaceutical auxiliary and/or additive, thus claim 32 (b) is met) mixed with one or more unsaponifiable fractions from any oil, especially a vegetable oil. Therefore, one of the ordinary skills in the art would have been motivated to add an unsaponifiable fraction of a vegetable oil, the lipidic extract of *Argania spinosa* from Charrouf et al, into the composition of Laigneau et al to achieve the UVA treating effect.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Claims 12-17, 19, 21, 32 and 33 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Charrouf et al and Laigneau et al as applied to claims 12, 13, 19, 32 and 33 above, and further in view of Charrouf et al 2 (EP 1213025 A1).

The teachings of Charrouf et al and Laigneau et al are set forth above and applied as before.

The combination of Charrouf et al and Laigneau et al does not specifically teach the claimed percentages of extracts or auxiliaries and additives in claims 14-17, and 21.

Charrouf et al 2 teach cosmetic or dermatological preparations for skin and/or hair care, containing Argania spinosa leaf extract, having e.g. sunscreen, antiinflammatory, antimicrobial, antioxidant and antiaging effects (see Title). Charrouf et al 2 teach other objects of the invention relate to the use of extracts from the leaves of the plant Argania spinosa as sunscreen, especially against UVA radiation and/or UVB radiation [0022]. Charrouf et al 2 teach the total quantity of plant extract, which is included in the inventive preparations, is usually 0.01 to 25 wt% (thus claims 14 and 21 are met), preferably 0.03-5 wt% (thus claim 15 is met), particularly 0.03-0.6 weight% (thus claim 16 is met) calculated as dry weight [0014]. Charrouf et al 2 teach the total amount of auxiliaries and additives may be 1 to 50 (thus claim 17 is met), preferably 5 to 40%, based on the cosmetic and/or dermopharmaceutical preparations [0015].

It would also have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to try to use the concentrations of Argania spinosa leaf extract in the

sunscreen product against UVA radiation and/or UVB radiation from Charrouf et al 2 since when applying fruit pulp extract of the same plant, Argania spinosa, in the same product, sunscreen product against UVA radiation, the concentrations of different plant parts (one from leaf, one from fruit pulp) of the same plant material are expected to have comparable biological effects. Therefore, it would have been obvious for one of the ordinary skills in the art to adopt the concentrations of Argania spinosa leaf extract in the sunscreen product against UVA radiation and/or UVB radiation from Charrouf et al 2 for the fruit pulp extract of Argania spinosa in treating UVA radiation. Furthermore, the result-effective adjustment in conventional working parameters (e.g., determining an appropriate amount of the extract within the composition) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Qiuwen Mi/

Primary Examiner, Art Unit 1655